



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

SENT VIA EMAIL

E-mail: 65585-80300970@requests.muckrock.com

July 2, 2019

Mr. Taylor Scott Amarel
MuckRock News
DEPT MR 65585, 411A Highland Ave
Somerville, MA 02144

Re: Freedom of Information Law ("FOIL") Tracking No. 2018-073529

Dear Mr. Amarel:

I write in response to the FOIL request that you submitted to the New York State Department of Financial Services ("Department") on December 13, 2018, which has been assigned the above-referenced tracking number and reads "Pursuant to the New York Freedom of Information Law, I hereby request the following records: I would like to obtain the last 200 pages of emails sent to, from, or copied to Maria T. Vullo. You may start with the most recent email (as of the time you receive this request). Convert this email to PDF and then proceed to the immediately prior email until 200 pages of emails have been produced. I request that you ignore spam, junk mail, or newsletters."

As an initial matter and per your request, the Department removed "spam, junk mail or newsletters" from the search results. For the reasons set forth below, your request is denied.

I. Public Officers Law § 87(2)(a)

Public Officers Law § 87(2)(a) (the "Statutory Exemption") applies to records that are specifically exempted from disclosure by state or federal law. The operative statutes here are New York Banking Law § 36.10, New York Insurance Law § 110 and CPLR 4503(a).

New York Banking Law § 36.10 provides that reports of examinations and investigations are confidential and shall not be made public. Therefore, the Department is not disclosing communications that pertained to investigations and examinations of banking entities.

New York Insurance Law § 110(a)(2) states, in relevant part, that "[the Department] may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information . . . from regulatory and law enforcement officials of other foreign or domestic jurisdictions . . . and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information." Therefore, the Department is not disclosing communications with other domestic regulators.

CPLR 4503(a) provides that materials protected by the attorney-client privilege doctrine are exempt from disclosure. Pursuant to CPLR 4503(a), the Department is not disclosing communications exchanged with Department attorneys and Maria T. Vullo. The attorney-client privilege applies to confidential communications between clients and their attorneys made 'in the course of professional employment' (CPLR 4503 [a] [1]), and such privileged communications are absolutely immune from discovery[.] (New York Times Newspaper Div. of New York Times Co.

v. Lehrer McGovern Bovis, Inc., 300 A.D.2d 169, 171 [1st Dep’t 2002]; see also Spectrum Sys. Intl. Corp. v. Chemical Bank, 78 N.Y.2d 371, 377 [1991]). The privilege applies to communications from the client to the attorney when the communication is “made for the purpose of obtaining legal advice and directed to an attorney who has been consulted for that purpose” (Rossi v. Blue Cross & Blue Shield of Greater N.Y., 73 NY2d 588, 593 [1989] quoting Matter of Bekins Record Storage Co., Inc., 62 N.Y.2d 324, 329 [1984]).

II. Public Officers Law § 87(2)(b)

The Department is not disclosing Maria T. Vullo’s personal communications pursuant to Public Officers Law § 87(2)(b), which provides an exception from disclosure for records that “if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of [Public Officers Law § 89(2)].” Determining whether disclosure would constitute an unwarranted invasion of personal privacy requires balancing the competing interests of public access and individual privacy. see Dobranski v. Houper, 154 A.D.2d 736 (3d Dep’t 1989).

Moreover, the interest of keeping that information private outweighs the competing interest of providing the public with access to this information. Such information about private citizens is of a personal nature and disclosure of the information would not serve any governmental purpose, which is consistent with the intent of FOIL. see Goyer v. New York State Dep’t of Env’tl. Conservation, 12 Misc.3d 261 (Sup. Ct. N.Y. County 2005).

III. Public Officers Law § 87(2)(g)

The Department is not disclosing intra and inter agency communications pursuant to Public Officers Law § 87(2)(g), which exempts from disclosure records that are “inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; [or] iv. external audits, including but not limited to audits performed by the comptroller and the federal government[.]” Such internal records contain opinions, recommendations, evaluations, and other subjective commentary by government employees, and do not contain information that fall within any of the four exceptions to non-disclosure under Public Officers Law § 87(2)(g).

In New York Times Co. v. City of New York Fire Dep’t, 4 N.Y. 3d 477, 488-89 (2005), the Court of Appeals held that “[t]he point of the intra-agency exception is to permit people within an agency to exchange opinions, advice and criticism freely and frankly, without the chilling prospect of public disclosure . . . [and] to permit the internal exchange of candid advice and options between agency employees.” (see also Miller v. New York State DOT, 58 A.D.3d 981, 984 [3d Dep’t 2009])(holding that “[t]he interagency and intraagency exemption applies to records that are deliberative, i.e., communications exchanged for discussion purposes not constituting final policy decisions.”).

IV. Public Officers Law § 89(3)

In addition to the exemptions listed above, your request is not reasonably described pursuant to Public Officers’ Law § 89(3). Whether a request is reasonably described may be dependent upon the nature of an agency’s filing or record keeping system and agency employees are not required to engage in herculean or unreasonable efforts to locate records. see Konigsberg v. Coughlin, 68 N.Y.2d 245 (1986) and the NYS Committee on Open Government’s FOIL Advisory Opinions 18949 and 18863.

The Committee on Open Government states that “it is unreasonable to require an agency to review thousands of records that may contain a particular search term or terms in response to a Freedom of Information Law request” and “it would be an unreasonable burden, in our view, to require an agency to review perhaps thousands of individual records in order to identify those portions of such records that are required to be made available.” (see FOIL-AO-18949).

V. Conclusion

Based on the aforementioned, your request is denied pursuant to Public Officers Law §§87(2)(a); (2)(b); and (2)(g).

In accordance with Public Officers Law § 89(4), you may appeal this determination within 30 days by writing to FOIL Appeals Officer, New York State Department of Financial Services, One State Street, New York, NY 10004, or by sending an email to FOIL.Appeals@dfs.ny.gov.

Sincerely,



Colleen Dawson
Senior Attorney